Texas Department of Insurance
Mental Health Condition
and
Substance Use Disorder
Parity Workgroup National Parity Updates

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Texas Mental Health Condition and Substance Use Disorder Parity Workgroup
National Parity Updates

Presented by:

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- Tim Clement, MPH, Senior Policy Advisor, The Kennedy Forum

Irvin L. 'Sam' Muszynski

- **Irvin "Sam" Muszynski, MSW, JD,** has over the span of his professional career been involved in both federal and state mental health and substance use disorder parity law and regulation matters since the mid-1970s. He was involved in shaping the legislative effort which led to the passage of the Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA) and its implementation. He formerly served as General Counsel and Managing Director for the National Association of Addiction Treatment Providers. He has been engaged with federal regulators throughout the parity regulation issuance and sub-regulatory guidance processes and currently communicates with them about the parity guidance to be issued as required by the Cures Act. He has trained an array of regulatory personnel on an NQTL audit tool he co-authored.* In addition, he has worked with and communicates extensively with major parity stakeholders including state regulators, Attorneys General, major health plans and managed behavioral health organizations respecting parity compliance issues. He is currently engaged under contract with several states to revise their parity compliance review and evaluation protocols and is part of an Interested Parties group involved in drafting new proposed standards for the NAIC Market Regulation Handbook regarding MHPAEA examinations. He is recognized as an expert in the federal rules and guidance and is consulted regularly for advice.

- * See:https://www.paritytrack.org/resources/model-resources/six-step-parity-compliance-guide/

Uma Dua, Pharm.D., MCM

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Practice Lead, Pharmacy & Healthcare Solutions

- Uma is a seasoned pharmaceutical leader with clinical, Affordable Care Act (ACA), managed care and revenue-cycle consulting experience, including for the Center for Medicare & Medicaid Services (CMS)
- Expertise includes strategic planning & analysis, operations management, pharmacy healthcare IT, and Mental Health Parity and Addition Equity Act (MHPAEA) requirements, including formularies, medication assisted treatments (MATs) and substance use disorders (SUDs)
- Developed, taught and attended numerous trainings on Mental Health Parity, Substance Use Disorders, Specialty Drugs, and Non-Discrimination Reviews

Tim Clement, MPH

Tim Clement, MPH

Senior Policy Advisor, The Kennedy Forum

- Tim has led all of the policy work for The Kennedy Forum since March of 2016
- Created and maintains the ParityTrack website, which monitors parity implementation in all 50 states in terms of legislation and regulatory actions
- Has expertise in all aspects of the Mental Health Parity and Addiction Equity Act and related sections of state code for all 50 states (including Chapters 1355 and 1368 of TX Code)
- Trained or is training multiple state regulatory agencies on parity implementation

Presentations Overview

- The State of the States Regarding Parity Oversight and Enforcement
- Essential Parity Pharmacy Matters
- Best Practices
- Recommendations to Consider

So Where Are We?
Current State parity Oversight Activities

- Consumer complaints and education
- Pre-market filing reviews
- Post-market conduct examinations/audits

Consumer Complaints and Parity Education

- Numerous states have published consumer education materials
- Complaint data and market analysis
- Complaint intake and processing
- Limitations on reliance on complaints
- Absence of complaints does not mean absence of market problems

Pre- Market Compliance Review

- State form filing requirements vary from simple attestations of compliance to MHPAEA workbooks and excel templates
- The scope, types and relevance of carrier documentation required vary considerably
- The limitations of SERFF, other resource limitations
- The parity testing paradigm is different
- The NAIC market regulation handbook and federal guidance are not specific

Post- Market Conduct Activities

- Focused market conduct reviews are not prevalent but generally have found MHPAEA problems
- Some examples: improper UR reviews, misapplication of medical necessity criteria, network adequacy, coverage exclusions including rx, provider rates
- Carrier documentation to evidence compliance lacking

New Federal Guidance: The Cures Act

- Illustrative, de-identified examples of MHPAEA compliance and noncompliance based on agency investigations
- Information illustrating requirements for NQTLs
- Recommendations for improving compliance
- Action plan to coordinate federal and state enforcement of parity requirements
- GAO Report on Enforcement and Compliance

Challenges to be Solved: from direct observation

- Practical hurdles: filing systems, forms and procedures that do not facilitate in-depth reviews at the pre-market stage. MHPAEA evaluation is different
- Insufficient resources generally and for technical issues which often arise in post-market exams which also represent an expansion of traditional regulator roles
- Wariness of instructing carriers to amend their plans for fear of legal challenges, among others
- Creating reliable documentation templates (especially for NQTLs) which permit verification of carrier attestations of compliance
- These issues cannot be ignored if we are going to seriously discuss improvements in compliance oversight and evaluation

Derived Principles for MHPAEA Compliance

1) Compliance oversight must be comprehensive. MHPAEA is a clearly defined set of rules, tests and documentation requirements, and sub-regulatory guidance. Compliance can only be assured when there is complete insurer fidelity to all applicable requirements and documentation that substantiates that all required parity analyses have been performed and are readily available
2) Compliance review must be meaningful; i.e., beyond reliance on issuer's attestations, and yet efficient for regulators (harness the so-called Sentinel Effect as part of the parity compliance effort)
3) The burden for primary compliance analyses is on the insurer, not the regulator

Parity: Pharmacy

- Pharmacy is a relevant component of parity-state and federal statutes
- Issues and drugs are complex in nature
- Regulators may shy away from reviewing policies/procedures & non-discrimination portion of the review

Recommendations to Increase Compliance

- Targeted Reviews
  - Formulary reviews
  - Non-discriminatory reviews
  - Claims, policies & procedures, and “in operation” reviews of both Mental Health/Substance Use Disorders and Medical/Surgical coverage

Best Practices: Pharmacy Parity Compliance

Pharmacy Gold Standards

Four approved medications for treatment of opiate dependency:

- **Methadone** [Dolophine] [Methadose] - Opioid Agonist- OTP ONLY
- **Buprenorphine** –[Subutex]-Partial Opioid Agonist OTP & OBOT
- **Naloxone** (+/-Buprenorphine)- [Narcan, Evzio] /[Bunavail, Suboxone, Zubsolv]-Opioid Antagonist+/- Partial Agonist- OTP & OBOT
- **Naltrexone** [ReVia, Vivitrol] – Opioid Antagonist PCP
- ***"…the all-cause mortality rate for patients receiving methadone maintenance treatment was similar to the mortality rate for the general population, whereas the mortality rate of untreated individuals using heroin was more than 15 times higher."***
- ***Methadone and buprenorphine both decrease morbidity, mortality, improve functionality, and decrease secondary health effects***

Best Practices: Pharmacy Parity Compliance

Methadone vs Buprenorphine

- Efficacy? **MMT (Methadone Maintenance Therapy)=BMT (Buprenorphine Maintenance Therapy)**
- Retention in a treatment program? **MMT>BMT**
- Patient Preference? **OBOT (Office Based Opioid Treatment) vs OTP (Opioid Treatment Program)?**
- How have they responded in the past?
- How severe is their SUD (i.e. past heroin abuse)? **MMT>BMT** [For recent heroin users, MMT was superior and higher doses required]
- Drug-Drug Interactions? **BUP>MMT**
- Safety Profile? Risk of Overdose (lower mortality)? **BMT>MMT** [First four weeks]
- Affordability? **MMT>BMT**
- Other services available? **MMT>BMT**
- Medical & Psychiatric stability? **MMT>BMT**
- Pharmacokinetics?

Recommendations to Increase Compliance

TDI could identify SAMSHA (Substance Abuse and Mental Health Services Administration), TIP 40, 43 and 63 as standards for formulary design and maintenance parity evaluations rather than ASAM (American Society of Addiction Medicine)

- SAMSHA is the governing body for Office-based Opioid Treatment (OBOT) programs
- More detailed criteria and standards than ASAM

State Best practices

What have we been able to identify as best or illustrative state practices for:

- Consumer education
- Pre- and post-market oversight and evaluation

Best Practices: regulatory action

- MT issues bulletin outlining “red flags”
- CA Department of Managed Health Care requires issuers to report about non-quantitative treatment limitations (NQTLs)
- MA MCO survey for parity compliance
- CT parity compliance survey
- New tool released by Kennedy Forum and APA being used by several states

Best practices: Consumer Education

- PA releases consumer guide
- MD releases MH/SUD insurance coverage guide and a short pamphlet
- IL creates consumer MH/SUD insurance guide

Best practices: Legislation

- Model legislation created by Kennedy Forum in conjunction with both APAs, AMA, ASAM, MHA, NAMI, National Council, and others
  - NQTL reporting requirement
  - Regulatory implementation guidance
  - Optional MAT coverage provisions

- Adapted versions introduced in CT, CO, DE, FL, IL, MN, MO, MS, NJ, PA, TN (signed into law), WY

Key considerations for the Workgroup

- In order to determine compliance for NQTLs, there must be a comparative analysis of how they are performed in operation in addition to written protocols (e.g., how is prior authorization conducted in practice)
- Higher denial rates for MH/SUD based upon medical necessity could indicate more restrictive utilization review, but not necessarily; must probe further
- Network adequacy heavily dependent on reimbursement rates and network admission standards

Recommendations to Increase Compliance

- TDI could issue a bulletin providing instructions to issuers subject to the Mental Health Parity and Addiction Equity Act (MHPAEA) found at 42 U.S.C. 300gg-26 as to the steps they must take to test for compliance with the non-quantitative treatment limitation (NQTL) requirements of MHPAEA's final regulations, 45 CFR 146.136(c)(4).